

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

....

O.A.No.209/93

Friday, this the 8th day of April, 1994

SHRI N.DHARMADAN, MEMBER (J)
SHRI S.KASIPANDIAN, MEMBER (A)

Applicant

V.Reghu Kumar,
Supdt. of Central Excise,
Internal Audit, Cen. Excise Head Quarters,
Central Revenue Buildings,
Cochin.

By Advocate Shri K.Sasikumar

Versus

Respondents:

1. Union of India, rep. by Secretary,
Ministry of Finance,
Department of Revenue,
New Delhi.
2. The Secretary, Central Board of Excise
& Customs,
New Delhi.
3. The Principal Collector of Customs &
Central Excise, Madras.
4. The Collector of Central Excise &
Customs, Cochin.
5. The Deputy Collector (P&E),
Central Excise Collectorate,
Central Revenue Buildings,
Cochin.
6. C.S.Gopalakrishnan Nair,
Supdt. of Central Excise (Tech.),
Central Excise Division,
Kalmandapam, Palghat.
7. N.P.Subramania Swamy,
Supdt. of Central Excise,
Central Excise Head Quarters,
Central Revenue Buildings,
IS Press Road, Ernakulam.
8. N.Bremkumar,
Supdt. of Central Excise,
Cen. Excise Collectorate,
Cochin.
9. Kurian Dogmmen,
Supdt. of Central Excise,
Internal Audit Wing,
Central Excise Headquarters,
Ernakulam.

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10. N.V.Aravindakshan,
Supdt. of Central Excise,
Range IV, Kalmandapam,
Palghat.
11. V.P.Omkumar,
Supdt. of Central Excise I Division,
Tharakandam Centre,
Banerjee Road,
Ernakulam.
12. M.K.Purushothama Kurup,
Supdt. of Central Excise Range,
Kannur.
13. M.A.Sadanandan,
Supdt. of Customs Policy,
Headquarters Office,
Ernakulam.
14. P.K.Govinda Pillai,
Supdt. of Central Excise Range,
Kasargode.
15. George Immanuel,
Supdt. of Central Excise,
Quilon III Range,
Quilon.
16. P.Kumaran,
Supdt. of Central Excise,
Preventive, Palghat Division,
Palghat.
17. G.Sasikumar,
Supdt. of Central Excise Range II,
Quilon.
18. C.K.Suresh Babu, Supdt. of Central Excise,
Range I, Koshikode.
19. C.M.Jacob, Supdt. of Central Excise,
O/o Assistant Director, Anti Evasion
Regional Unit, Cochin-18.

By Advocate Shri K.Karthikeya Panicker (R1-5)
By Advocate Shri K.Ramakumar (R6)

O R D E R

S.Kasipandian, AM

The applicant was working as Inspector of Central Excise and he was considered for promotion as Superintendent in Central Excise Department in the Cochin Collectorate by the DPC held on 28.6.91. He is aggrieved that even though he was No.2 in the seniority list of officers considered for promotion he was overlooked, whereas a person who was in the 30th rank had been selected. Again, in the subsequent DPC

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held on 4.5.92, even though the applicant was selected, another person who was far junior to him was placed above him. Learned counsel for applicant argued that arbitrariness has crept into the selection procedure since there is a change in the constitution of the DPC. Previously the DPC for promotion to the post of Superintendent was headed by Member (Personnel) with Director (Inspection) and the concerned Collector and Deputy Collector as its members. It was ensured that at least one of the members of the DPC was from the UPSC and another member from another Central Government Department. Learned counsel for applicant complained that the respondents have manipulated the number of vacancies also in order to extend the zone of consideration by including not only anticipated regular clear vacancies due to retirement, but also by including vacancies expected due to officers' going on deputation. It was also argued that the meeting of the DPC for filling up the vacancies for the year 1990-91 was originally scheduled to be held at Ernakulam, but suddenly the venue was changed and shifted to Madras, when the zone of consideration also was extended with a view to including the officer in the 30th rank in the panel. As per order from the Tribunal in OA 146/90 the DPC proceedings held on 30.1.90 was reviewed in 1992 and the 30th rank person referred to above was included as No.1 in the select panel by the review DPC, but in pursuance of the changes brought about by the review DPC there was no other changes effected in the DPC held on 28.6.91 and the DPC held on 4.5.92. If the principles followed by the review DPC as per the direction of the Tribunal in OA 146/90 had been followed by the DPC in their meeting held on 28.6.91 the applicant would have had a better chance of selection. Learned

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counsel for applicant further argued that the DPC followed different standards in making assessment of the CRs of the officers considered for selection in their two meetings--one held on 28.6.91 and another on 4.5.92. It is this adoption of double standard which has resulted in gross injustice to the applicant.

2. Learned counsel for respondents argued that the officers who got 'outstanding' were placed above those who got 'very good' and those who got 'very good' were placed above officers who got grading as 'good'. Since the applicant's grading was only 'good', he could not be selected by the DPC held on 28.6.91. Similarly, in the DPC held on 4.5.92 one Shri C.M.

Jacob was placed above the applicant because he got a 'very good' grading, whereas the applicant got only 'good' grading.

3. After having heard the learned counsel on both sides we called for the DPC proceedings along with CRs of the officers considered for selection. Originally only the bare minutes of the DPC proceedings were produced by the respondents.

When the CRs were asked for by this Tribunal, second time they produced only those ACRs of officials who were selected by the DPC in their meeting held on 28.6.91. The case was further adjourned for production of the remaining CRs.

After protracted hearing they have furnished CRs of some of the officers who were considered for selection by the DPC on 4.5.92. All the same, they withheld production of CRs of the applicant without giving any reason. They have also not furnished the CRs of Shri C.M.Jacob, who was placed above the applicant, on the ground that it has been sent to Madras. The attempt on the part of the Respondents to withhold relevant information from the Tribunal speaks for itself.

4. A perusal of the minutes of the DPC shows that for the DPC held on 28.6.91 they had increased 2 vacancies on the

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following ground:

"Further 2 vacancies in the grade of Superintendent Group B are expected on account of the deputation to various Air pools/DRI. Thus the total anticipated vacancies expected during the year 1991-92 will be 13".

But for the DPC held on 4.5.92 they have reduced 3 vacancies on the following ground:

"Out of these, 3 vacancies are earmarked for Superintendents repatriated/to be repatriated from DRI/Anti Evasion Directorate".

Usually, deputation vacancies are not to be included in the calculation, for the simple reason that over a given period the people who go on deputation and people who are repatriated back to the Department from their deputation must more or less be the same. But this alone does not substantiate the allegation of the applicant that the venue of the DPC for the year 1991 was changed from Ernakulam to Madras and the number of vacancies was increased in the meantime. As the connected file which was asked for by this Tribunal has not been produced by respondents, it is not possible to give any verdict on this accusation.

4. Perusal of the minutes of the DPC regarding the assessment of the various officers considered for selection is very revealing as may be seen from the Table Annexed to this judgement. As may be seen therefrom, the gradings given by the DPC held on 28.6.91 and the gradings given by the DPC held on 4.5.92 have been vastly different in respect of the same officers. This difference has to be accounted for only by the CRs for the year 1991-92 as in column (4). The members of the DPC held on 28.6.91 and on 4.5.92 were the same except one. Even though Shri T.Bhaskaran was originally shown as a member in the DPC held on 28.6.91 he has been replaced by one Shri A.Kalingaraj who has signed the DPC proceedings



without any date unlike other members. The above assessment and grading made by the DPC lead to a natural inference that their grading has been totally arbitrary and whimsical. For these reasons, we quash the DPC proceedings held on 28.6.91 and 4.5.92 and direct the respondents to hold a review DPC preferably with one or two members drawn from either the UPSC or some other Central Government Department, in order to ensure fairplay and justice.

5. The application is allowed with the above directions which may be complied with within a period of four months from the date of receipt of the judgement. There is no order as to costs.

S-Kamp 8.4.94

(S.Kasipandian)
Member (A)

N.Dharmadan 8.4.94

(N.Dharmadan)
Member (J)